

Remarks

In response to the Office Action dated August 28, 2007, Applicant respectfully requests reconsideration based on the above claim amendment and the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance.

Claim Objections

Claims 14 is objected to as being on the same line as 13 and is missing a status indicator. Claim 14 has been separated out with an "original" indicator. As such the objections may be withdrawn.

103 Rejections

Claims 1-6, 8 and 10 stand rejected under 35 USC 103(a) as being anticipated by Paul (US Pat. 6,381,745) and Official Notice. Claims 11, 12, 17-21 and 24-28 stand rejected under 35 USC 103(a) as being anticipated by Paul in view of Klosterman (U.S. Pat. 6,072,983). Claims 13-16 and 22-23 stand rejected under 35 USC 103(a) as being anticipated by Paul, Klosterman, and allegedly Applicant's admitted prior art ("AAPA"). The Applicant respectfully traverses the rejections.

Claims 1-6, 8 and 10

Claims 1-6, 8 and 10 stand rejected under 35 USC 103(a) as being anticipated by Paul (US Pat. 6,381,745) and Official Notice. Amended claim 1 recites, in pertinent part: "[a] system for delivering to a subscriber a first signal that is free from a right-of-way franchise fee...the multiplexer combining the second signal and the first signal into a combined signal for routing to the subscriber, the combined signal being comprised of at least two of a video signal, a voice signal and a data signal where the first signal does not contain the same type of signal as the second signal; and (d) an optical network unit on the second side of the right-of-way in communication with the multiplexer and in communication with the subscriber wherein the optical network unit separates the combined signal into the first signal and the second signal."

The Applicant respectfully notes that Paul fails to describe a combined signal comprised of at least two of a video signal, a voice signal and a data signal. Paul is

concerned with combining and delivering only video signals from satellite, CATV and VCR sources. Paul describes a local VCR input **172** being combined with a satellite signal source **160** and a CATV signal source **163** at diplexer **112/combiner 113/diplexer 115**. The combined satellite/CATV signal is then delivered to the subscriber satellite adaptor **150** for separation. Because Paul fails to describe that the combined signal is comprised of at least two of a video signal, a voice signal and a data signal, Paul fails to describe each and every claim element.

The current Office Action rebuts this argument by asserting that Paul describes “combining at least two of a video signal, a voice signal and a data signal” by arguing that the term “data” encompasses “video data” and because Paul describes combining satellite and CATV signals Paul is describing combining “video” and “video data” signals. (See, page 3, l. 17-19 and ¶ 8). Applicant completely disagrees and asserts that the Office Action is not arguing the limitation claimed which is improper. MPEP 2145(VI).

By interpreting the phrase “data signal” as being “video data signal”, the Office Action is rendering the preceding phrase “data signal” superfluous and is effectively reading the phrase “data signal” out of the claim altogether. Using the construction proffered by the Office Action, the term “data signal” could also encompass “audio data signal” as well.

Words are known (i.e. defined) by the company they keep. By reciting “data signal” the claim is implying that the word “data” DOES NOT include either video or audio. It is a well known principal of claim construction that the claim must be read to give each term meaning and to NOT render a term superfluous.

Applicant respectfully points out that the Examiner is expressly conceding (See, page 3, l. 16-19) that he considers satellite television signals to be both “video signals” and “video data” signals; and that he considers cable television signals to also be both “video signals” and “video data signals”. Because the Examiner is improperly conflating the terms “video” and “data” where claim construction requires that “video” and “data” are mutually exclusive, the Office Action is improperly arguing limitations that have not been claimed. As such, the rejection must fail because Paul fails to describe that the

combined signal is comprised of at least two of a video signal, a voice signal and a data signal.

Because Paul fails to describe each and every claim element, the Office Action has failed to establish a prima facie case of obviousness. As such, independent claim 1 is allowable over Paul for at least this reason.

Further, amended claim 1 recites "...the first signal does not contain the same type of signal as the second signal..." In paragraph 4, the Office Action concedes that Paul fails to describe that the first signal does not contain the same type of signal as the second signal. As such, amended independent claim 1 is allowable for at least this same reason.

Claims 2-6, 8 and 10 depend from an allowable independent claim 1 and are allowable for at least the same reasons.

Claims 11, 12, 17-21 and 24-26

Claims 11, 12, 17-21 and 24-28 stand rejected under 35 USC 103(a) as being anticipated by Paul in view of Klosterman (U.S. Pat. 6,072,983). Claim 11 recites, in pertinent part:

"[a] method for delivering to a subscriber a first signal that is subject to right-of-way franchise fees, wherein the method comprises the steps of:

(a) transmitting a second signal from a first side of the right-of-way, through the right-of-way, and to a second side of the right-of-way, wherein the first side is opposite the second side, the second signal comprising at least a voice signal;

(b) receiving via a wireless communication the first signal on the second side of the right-of-way such that the first signal does not pass through the right-of-way, the signal comprising at least one of a video signal and a data signal..."

The Applicant respectfully points out that Paul is concerned with providing CATV and Satellite signals to a customer TV/VCR. Paul does not describe transmitting a second signal comprising at least a **voice signal**.

Similarly, Klosterman is concerned with combining television schedule information from different sources. Klosterman also does not concern itself with transmitting a second signal comprising a **voice signal**.

Since neither Paul nor Klosterman describes the transmission of a voice signal in any fashion, the combination of Paul and Klosterman also fails to describe the

transmission of a voice signal. As such, amended independent claim 11 is allowable over the combination of Paul and Klosterman because there is a lack of a prima facie case of obviousness. Amended independent claims 20 and 26 recite similar subject matter and are allowable over Paul for at least the same reasons. Claims 11-19, 21-25 and 27-28 depend variously from an allowable amended independent claim 11, 20 or 26 and are allowable for at least the same reasons.

Claims 13-16 and 22-23

Claims 13-16, 22 and 23 stand rejected under 35 USC 103(a) as being unpatentable over Paul in view of Klosterman and further in view of Applicants alleged AAPA.

Claims 13-16 and 22-23 depend from an allowable independent claim 11 or 20 and share their features. As such, claims 13-16 are allowable over the combination of Paul, Klosterman and the AAPA for at least the same reasons.

Conclusion

Applicants assert that the application including claims 1-28 is now in condition for allowance. Applicants request reconsideration in view of the amendments and remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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